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5 Attorney for Petitioner
6 JAY STEWART MILLER

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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12 JAY STEWART MILLER,) NO. CIV S-00-0757 LKK GGH P
13 Petitioner,)
14 v.) **STIPULATION AND ORDER SETTING**
15 CAL TERHUNE, et al.,) **DEADLINE FOR PETITIONER'S CLOSING**
16 Respondents.) **POST-HEARING BRIEF**
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Petitioner, JAY STEWART MILLER, and respondents, CAL TERHUNE, et al., by and through their respective counsel, hereby agree and stipulate as follows:

1. Pursuant to prior stipulation and order, final briefing in this matter was stayed pending the California Supreme Court's anticipated decisions in People v. Wright, No. S119067, and People v. Gregory, No. S110450. Wright was decided on May 26, 2005. The court did not reach the merits of the question whether imperfect self-defense may be based on an actual, though unreasonable, belief in the need to defend which is based on delusions resulting from mental illness or intoxication. People v. Wright, 35 Cal.4th 964 (2005).

1 2. Counsel for respondent has recently learned that he was
2 mistaken in his good-faith belief, and prior representation to the
3 court and to opposing counsel, that the Gregory case had already been
4 argued to the California Supreme Court. The case has been fully
5 briefed, but has not yet been scheduled for argument. Counsel for
6 respondent contacted counsel for petitioner as soon as he became aware
7 of the actual status of Gregory.

8 3. Counsel for petitioner subsequently contacted the
9 attorney for the petitioner in Gregory, who has had no indication from
10 the California Supreme Court whether or when argument will be
11 scheduled.

12 4. Accordingly, the parties agree that final briefing and
13 submission of this case should not be further delayed. The parties
14 agree that petitioner's closing post-hearing brief may be filed within
15 thirty (30) days. The case will then be submitted for decision. The
16 parties do not believe that preparation of Findings and Recommendations
17 should await a decision in Gregory, supra.

18 5. Following the California Supreme Court's decision in
19 Gregory, either party may file a Notice Of Supplemental Authority
20 together with a letter brief discussing the significance of the
21 decision for this case.

22 6. Because the parties do not know when Gregory will be
23 decided, if the court will reach the merits of the imperfect self-
24 defense question, or if the decision will shed any light on the state
25 of California law at the time of Mr. Miller's trial, the parties
26 request that submission of this matter not be deferred.

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5. Counsel for respondent has authorized counsel for petitioner
to sign this stipulation on his behalf.

3 || Dated: July 20, 2005

Respectfully submitted,

QUIN DENVIR
Federal Defender

/s/ Allison Claire
ALLISON CLAIRE
Assistant Federal Defender
Attorney for Petitioner
JAY STEWART MILLER

12 || Dated: July 20, 2005

BILL LOCKYER
Attorney General of the State of
California

/s/ Clifford E. Zall
CLIFFORD E. ZALL
Deputy Attorney General
Attorney for Respondents

O R D E R

Pursuant to the stipulation of the parties and for good cause shown, petitioner's closing post-hearing brief shall be filed within thirty days of the effective date of this order. The case will then be submitted for preparation of Findings and Recommendations.

IT IS SO ORDERED.

24 || DATED: 7/29/05

/s/ Gregory G. Hollows

HON. GREGORY G. HOLLOWSS
United States Magistrate Judge

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